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OFFICE OF PETITIONS

In re Application of :
Luisa Iruela-Arispe et al :
Application No. 09/989,687 : **DECISION DISMISSING PETITIONS**
Filed: November 21, 2001 : **UNDER 37 CFR 1.78(a)(3) AND (a)(6)**
Attorney Docket No. PF453P3 :

This is a decision on the petition treated under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed September 8, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment and Application Data Sheet (ADS).

The petition is **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(iii) and 1.78(a)(5)(i) and 1.78(a)(5)(iii) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item (1). In this regard, the amendment and the Application Data Sheet do not set forth the same claim for benefit of priority. More specifically, the Application Data Sheet states that this application is a division of 09/255,794, which is a continuation-in-part of Application No. 09/005,874, which claims priority to 60/036,100, and that Application No. 09/005,874 is a continuation-in-part of PCT/US9617957. The amendment

does not set forth this same claim for benefit of priority. It is further noted that the above-noted applications do not have an inventor in common and is further unacceptable for this reason. Therefore, in view of the inconsistency in the claim for benefit of priority in the ADS and the amendment, the petition cannot be granted until this matter is corrected.

Accordingly, before the petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) can be granted, a proper claim for benefit must be presented in compliance with 37 CFR 1.121 and must be accompanied by a renewed petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

The rules at 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) require a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR §§ 1.78(a)(3) and 1.78(a)(6). If this is not a correct reading of the statement appearing in the petition, petitioner should so state in the renewed petition.

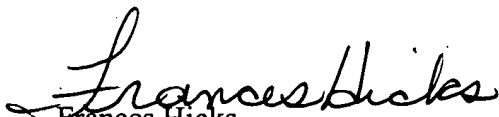
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Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions